



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 28, 1995

Ms. Cathy B. Campbell
Director, Legal Services
Texas Department of Mental Health
and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR95-539

Dear Ms. Campbell:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31715.

The Texas Department of Mental Health and Mental Retardation (the "department") has received a request for information regarding complaints against a particular employee. You assert that the requested information is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with various statutes and the doctrine of common-law privacy.

First, you assert that the requested information is confidential under section 34.08 of the Family Code. Subchapter A of chapter 34 of the Family Code governs reports of child abuse and investigations conducted by the Texas Department of Protective and Regulatory Services ("DPRS") and law enforcement agencies. If a report alleges that abuse occurred at a facility operated by another state agency, that agency is required to investigate the report as prescribed by subchapter B. Fam. Code § 34.05. Section 34.08 makes confidential "the reports, records, and working papers used or developed in an investigation made under this chapter." Although it is not clear whether the allegations of child abuse at issue were investigated by the department, DPRS, or both, section 34.08 appears to apply to investigations under subchapter B as well as subchapter A. Therefore, we conclude that all the reports, records, and working papers used or developed in an investigation of child abuse are confidential under section 552.101 of the Government Code in conjunction with section 34.08, and may be released only as provided in section 34.08.

Section 34.08 does not make confidential documents generated by the department *after* the completion of the investigation of child abuse, that is, the handwritten letter to the assistant superintendent, dated December 12, 1994.¹ Therefore, we address the remainder of your claims.

Section 611.002(a) of the Health and Safety Code provides that “[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.” For purposes of section 611.002, “professional” means a person authorized to practice medicine or licensed or certified to diagnose, evaluate or treat any mental or emotional condition or disorder. *See* Health & Safety Code § 611.001(2). Confidential records and communications may only be released as provided by section 611.004 and 611.045. The handwritten letter does not appear to reveal communications between a patient and a professional or to constitute records of the identity, diagnosis, evaluation, or treatment of a patient that have been created or maintained by a professional.²

Chapter 576 of the Health and Safety Code sets forth the rights of mental health facility patients. Section 576.005(a) provides as follows: “Records of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law.” Although you have not raised this statute, we assume that the Austin State Hospital is a “mental health facility” and that this statute applies. *See id.* § 571.003(12) (defining the term “mental health facility”). Accordingly, the department must redact all information that directly or indirectly identifies patients prior to releasing records that are otherwise disclosable. In this case, the handwritten letter does not appear to directly or indirectly identify patients.³

Finally, we address your contention that the handwritten letter must be withheld under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy. Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” For information to be protected from public disclosure under the common-law right of privacy as section 552.101 incorporates it, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that

¹It is not clear whether the typewritten memorandum, dated October 31, 1994, was generated by the department before or after the completion of the child abuse investigations. If it was generated prior to the completion of the investigations and was used or developed in an investigation of child abuse it is confidential under section 552.101 of the Government Code in conjunction with section 34.08, and may be released only as provided in section 34.08. *See also infra* notes 2-4.

²Nor does the memorandum appear to reveal communications between a patient and a professional or to constitute records of the identity, diagnosis, evaluation, or treatment of a patient that have been created or maintained by a professional.

³Nor does the memorandum appear to directly or indirectly identify patients.


information ... is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. art. 6252-17a, § 3(a)(1)). This office has concluded on repeated occasions that there is a legitimate public interest in the on-the-job conduct and performance of public employees, and the reasons for their dismissal, demotion, promotion, or resignation. Open Records Decision Nos. 444 (1986), 405 (1983).

You assert that the requested information implicates the privacy interests of the children who were reported to have been abused and the employee who was alleged to have abused them. Given that the handwritten letter does not reveal the identities of any patients, it does not implicate their privacy interests. With respect to the employee, it is immaterial under the doctrine of common-law privacy that the allegations against him were not confirmed. *See* Open Records Decision No. 579 (1990). You assert that the fact that the employee alleged that he was being harassed at home and at work is highly intimately and embarrassing. We believe, however, that the allegation that a public employee was harassed by co-workers is of legitimate public interest. Therefore, we conclude that the handwritten letter is not confidential under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy. Accordingly, this document must be released.⁴

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/LRD/rho

⁴For the same reasons, the memorandum is not confidential under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy. Accordingly, if is not confidential under section 34.08 of the Family Code, it must be released.

Ref.: ID# 31715

Enclosures: Submitted documents

cc: Kelli A. Norris
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(w/o enclosures)